IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

JACQUELINE WHITFIELD, INDIVIDUALLY
AND ON BEHALF OF THE WRONGFUL
DEATH BENEFICIARIES OF KIRBY
COCKRELL, DECEASED PLAINTIFF

V. CIVIL ACTION NO.: 1:00CV25-D-D

CITY OF COLUMBUS, MISSISSIPPI and
COLUMBUS POLICE DEPARTMENT DEFENDANTS

OPINION

Before the court is the Municipal Defendant's[1] motion for summary judgment pursuant to Rule 56 of the *Federal Rules of Civil Procedure*. Upon due consideration, the court finds that the motion is well-taken and should be granted.[2]

Factual Background

In the early morning hours of May 28, 1998, Columbus police officer, Darnell Brown (Brown), radioed from south Columbus, Mississippi, that he was in pursuit of a vehicle that allegedly had failed to pull over for a routine traffic stop. The vehicle was being driven by Kirby Cockrell (Cockrell). Subsequently, Cockrell pulled over and exited his vehicle. At this time the facts become disputed.

Brown claims that Cockrell ran towards him, a struggle ensued, Cockrell reached for Brown's

[1] Municipal Defendant is the City of Columbus, Mississippi. Plaintiff's claims against the Columbus Police Department are in actuality simply misstated claims against the City of Columbus. See Darby v. Pasadena Police Dep't, 939 F.2d 311 (5th Cir.1991).

[2] Also pending is Municipal Defendant's Motion to Strike the affidavit of D.P. Van Blaricom.

gun, Brown got to the gun first, and fired two shots at Cockrell. The Plaintiff, Jacqueline Whitfield (Whitfield) alleges that Cockrell ran from Brown after exiting his vehicle, at which time, Brown pulled out his gun and shot him.

Thereafter, Cockrell died from a gunshot wound to the head. The bullet entered into the back of this neck and exited through his mouth perforating the right jugular vein and the right common carotid artery.

Subsequently, Whitfield filed suit against the city of Columbus, Mississippi and Columbus Police Department[3] (Municipal Defendant) claiming they had a custom, policy, and/or practice of being deliberately indifferent in adopting a training or supervisory policy for officers of the Columbus Police Department, and that said policy proximately caused the death of Cockrell. Additionally, Whitfield brings supplemental state law claims alleging the Municipal Defendant was grossly negligent in failing to properly train police officers, which proximately caused the death of Cockrell. Municipal Defendant moves for summary judgment pursuant to Rule 56 of the *Federal Rules of Civil Procedure*.

Discussion

1. *Summary Judgment Standard*

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986) ("The burden on the moving party may be discharged by 'showing'... that there is an absence of evidence to support the non-moving party's case."). Under Rule 56(e) of

[3] Plaintiff also filed suit against Donald Freshour, Chief of the Columbus Police Department and Darnell Brown, individually and as a member of the Columbus Police Department. Claims against Brown and Freshour were dismissed by this court pursuant to a May 12, 2000 order.

the Federal Rules of Civil Procedure, the burden shifts to the nonmovant to "go beyond the pleadings and by...affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." Celotex Corp., 477 U.S. at 324. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the nonmovant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 2513, 91 L. Ed. 2d 202 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the nonmovant. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986).

2. *Federal claims Against Municipal Defendant.*

The United States Supreme Court decided in 1978 that a municipality could not be held vicariously liable in an action under § 1983; such liability attaches only when the municipality itself has acted wrongly. Monell v. New York City Dept. of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). To succeed on her failure to train claim, Whitfield must show three things: (1) the training or hiring procedures of the municipality's policymaker were inadequate; (2) the municipality's policymaker was deliberately indifferent in adopting the hiring or training policy; and (3) the inadequate hiring or training policy directly caused the plaintiff's injury. Connor v. Travis County, 209 F.3d 794, 796-97 (5th Cir. 2000) (quoting Baker v. Putnal, 75 F.3d 190, 200 (5th Cir.1996)). See also Spiller v. City of Texas City, 130 F.3d 162, 167 (5th Cir.1997).

a. Inadequate training or hiring procedures.

The inadequacy of police training may serve as a basis for Section 1983 liability only where a municipality's failure to train its employees in a relevant respect evidences a deliberate indifference to the rights of its inhabitants. Burge v. Parish of St. Tammany, 187 F.3d 452, 472 (5th Cir.1999). It must be proven that the alleged deficiency in training actually caused the failure of the employee or officer to perform his duty constitutionally. Id. The Fifth Circuit has declined to find governmental liability in a failure to train case where the law enforcement officers in question had successfully completed the minimum training mandated by state law and had been certified by the state. Benavides v. County of Wilson, 955 F.2d 968, 973 (5th Cir.1992).

Under Mississippi law, all law enforcement officers must successfully complete the Law Enforcement Training Academy within one year of employment. See Miss Code Ann. § 45-6-11(3)(A) (Supp.2000). Before joining the Columbus Police Department, Brown had been trained as a military police officer and served in the United States Army from 1987 through 1994. The Municipal Defendant, upon hiring Brown, sent him to the North Mississippi Law Enforcement Training Center. While there, he received the police training required to be certified as a peace officer under the laws of Mississippi on July 18, 1996. He graduated top in his class and was named Platoon Leader by the North Mississippi Law Enforcement Training Center. This training included instruction in apprehension of suspects and the proper use of firearms. Brown also received additional training from the Columbus Police Department with favorable evaluations. Additionally, Brown received training in the safe use of his service weapon and was judged proficient and qualified to carry the weapon. Brown had a clean record before he was hired, and prior to the incident in question, had not been the focus of any complaints regarding improper conduct during his time on the force.

At the time of the incident, the City of Columbus, Mississippi had well established and detailed written procedures regarding the use of deadly force by police officers. The policy was drafted based on guidelines drawn from other law enforcement agencies and organizations, including the International Association of Chiefs of Police and commission of Accreditation Law Enforcement Standards. In addition to training provided at the Law Enforcement Training Academy, each Columbus Police officer, including Brown, received twenty hours of mandatory in-service training each year, which included training on the use of force. Columbus Police officers were also provided training classes by external law enforcement agencies and schools in addition to the mandatory in-service training.

While one might hypothesize about training that might purportedly have prevented the shooting, the Supreme Court has refused to constitutionally mandate specific kinds of police training and has warned lower courts of the inherent danger involved in such "judicial legislation." City of Canton v. Harris, 489 U.S. 387, 392, 109 S.Ct. 1197, 1206 (1989). The result would be "an endless exercise of second-guessing municipal employee-training programs. This is an exercise we believe the federal courts are ill-suited to undertake, as well as one that would implicate serious questions of federalism." Id.

However, Whitfield does not even hypothesize of missing or inadequate training in this case. In addition to the blanket allegations of failure to train and supervise, she merely states that because an unarmed man was shot in the back by a Columbus Police officer, the Columbus Police Department failed to train the officer. In her reply memorandum, she simply alleges that whether the Municipal Defendant was negligent in hiring and training Brown is a question of fact. However, Whitfield has brought forth no facts to dispute the Municipal Defendant's evidence. Therefore, in reviewing the

evidence the court finds no municipal policy which might support a finding of liability by the City of Columbus or the Columbus Police Department. As such, the court finds that Whitfield has not met her burden in showing an essential element of her case.

b. Deliberate indifference.

Deliberate indifference is more than mere negligence. See Rhyne v. Henderson County, 973 F.2d 386, 392 (5th Cir.1992) ("While the municipal policy-maker's failure to adopt a precaution can be the basis for § 1983 liability, such omission must amount to an intentional choice, not merely an unintentionally negligent oversight."); see also Doe v. Taylor Independent School Dist., 15 F.3d 443, 453 n.7 (5th Cir.1994) (distinguishing "deliberate indifference" from "gross negligence" by noting that "the former is a 'heightened degree of negligence,' [whereas] the latter is a 'lesser form of intent'") (quoting German v. Vance, 868 F.2d 9, 18 n.10 (1st Cir.1989)). Plaintiff must show that, "in light of the duties assigned to specific officers or employees, the need for more or different training is obvious, and the inadequacy so likely to result in violations of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." City of Canton, 487 U.S. at 390, 109 S.Ct. at 1205, quoted in Benavides, 955 F.2d at 972.

In Languirand v. Hayden, 717 F.2d 220 (5th Cir.1983), the Fifth Circuit, while declining to rule whether there was a cause of action for failure to train, observed that if any such action exists, it must be predicated upon gross negligence amounting to conscious indifference by the city and may not be imputed solely from the negligence or gross negligence of subordinate officials. There must be a pattern or practice of constitutional violations supporting such a theory. Id. at 227-28.

Proof of random acts or isolated incidents involving city employees is not sufficient to show the existence of a custom or policy upon which municipal liability may be based. Fraire v. City of

Arlington, 957 F.2d 1268, 1278 (5th Cir.1992). To prove a municipal policy or custom, a plaintiff must show a pattern of similar incidents in which citizens were injured or endangered by the policy in question and such incidents had occurred for so long or so frequently that it could be considered an expected and accepted policy of city employees. Webster v. City of Houston, 735 F.2d 838, 842 (5th Cir.1984). Only in extreme cases may "a single decision by a policy maker . . . constitute a policy for which the [governmental entity] may be liable." Brown v. Bryan County, 219 F.3d 450, 462 (5th Cir. 2000).

Once again, Whitfield has failed to point to even one prior incident in which citizens were injured or endangered by a policy of the Columbus Police Department or the City of Columbus, Mississippi. Instead, she insists that this is also a fact question for the jury.

As proof of negligence, Whitfield submits to the court an affidavit by D.P. Van Blaricom, an expert in police arts and science. Mr. Blaricom asserts that based on the facts presented in this case, in his expert opinion, the shooting in question was a "grossly excessive and 'objectively unreasonable' use of force." See affidavit of D.P. Van Blaricom, p. 3. Municipal Defendant has moved the court to strike this affidavit due to Whitfield's failure to designate an expert witness, as well as, failure to comply with other rules of discovery.

When seeking to prove a municipality's malevolent motive, however, a plaintiff must introduce more evidence than merely the opinion of an expert witness. In Stokes v. Bullins, 844 F.2d 269 (5th Cir.1988), the district court relied primarily on the testimony of a single expert witness in holding that a municipality violated § 1983. The Fifth Circuit disagreed, remarking that "an expert's opinion should not be alone sufficient to establish constitutional 'fault' by a municipality in a case of alleged omissions, where no facts support the inference that the town's motives were contrary to

constitutional standards." Id. at 275.

In short, the totality of the evidence does not even approach the City of Canton standard: that the inadequacy be "so obvious" and "so likely to result in the violation of constitutional rights," that the city can be said to have been deliberately indifferent. City of Canton, 489 U.S. at 390, 109 S.Ct at 1205. Therefore, the court finds the Municipal Defendant's motion to be well-taken on the federal claims and accordingly grants summary judgment.

. III. *State claims against Municipal Defendant.*

Having dismissed the claims over which it has original jurisdiction, the court declines to exercise supplemental jurisdiction over Whitfield's state law claims. See 28 U.S.C. § 1367(c). Therefore, the court shall dismiss Whitfield's state law claims without prejudice.

A separate order in accordance with this opinion shall issue this day.

This the _____ day of January, 2001.

/s/
Chief United States District Judge

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ORDER GRANTING SUMMARY JUDGMENT

Pursuant to an opinion issued this day, it is hereby ORDERED that

1. the Defendant's motion for summary judgment (docket entry #19) is GRANTED;

2. the Plaintiff's federal claims are DISMISSED WITH PREJUDICE;

3. the Plaintiff's state law claims are DISMISSED WITHOUT PREJUDICE;

4. the Defendant's motion to strike the affidavit of D.P. Van Blaricom (docket entry #23) is DENIED as moot; and

5. this case is CLOSED.

All memoranda, depositions, declarations and other materials considered by the court in ruling on this motion are hereby incorporated into and made a part of the record in this action.

SO ORDERED, this the _____ day of January, 2001.

/s/
Chief United States District Judge